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REPORT
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EMERGENCY CHINESE ADJUSTMENT OF STATUS FACILITATION ACT OF 1989

JULY 28, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2712]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2712) to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for "J" nonimmigrants and by treating nonimmigrants, whose departure has been deferred by the Attorney General, as remaining in legal nonimmigrant status for purposes of adjustment or change of status, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Chinese Adjustment of Status Facilitation Act of 1989".

SEC. 2. WAIVER OF 2-YEAR FOREIGN RESIDENCE REQUIREMENT FOR CHINESE "J" NONIMMIGRANTS IN THE UNITED STATES.

The 2-year home country residency and physical presence period requirement under section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) shall not apply in the case of any national of the People's Republic of China who is present in the United States on the date of the enactment of this Act and who would otherwise be subject to that 2-year home residence requirement because of

H523-10.

having had the status of a nonimmigrant described in section 101(a)(15)(J) of such Act (8 U.S.C. 1101(a)(15)(J)).

Amend the title so as to read:

A bill to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for "J" nonimmigrants.

PURPOSE OF LEGISLATION

The purpose of H.R. 2712, as amended, is to waive the 2-year foreign residency requirement for nationals of the People's Republic of China who entered the United States as nonimmigrants to study or teach pursuant to the exchange visitor program of our immigration law.

HISTORY OF LEGISLATION

H.R. 2712 was introduced by the Honorable Nancy Pelosi on June 21, 1989. The bill currently has approximately 240 cosponsors.

The Subcommittee on Immigration, Refugees, and International Law held a hearing on the bill on July 20, 1989. The Subcommittee received testimony from Immigration and Naturalization Service and State Department witnesses, as well as from representatives of interest groups concerned for the safety of Chinese students in the United States. Congresswoman Pelosi also testified.

H.R. 2712 was marked-up by the Subcommittee on that same day. During the mark-up, the Honorable Bruce A. Morrison, Chairman of the Subcommittee, offered an amendment to strike section 3 from the bill. That section would have allowed nonimmigrant nationals of the People's Republic of China who were in the United States as of June 5, 1989 to adjust their status to either another nonimmigrant category or to permanent resident alien status, pending the availability of a visa. In agreeing to the amendment, the Subcommittee felt that section 3 more appropriately belonged in H.R. 2929, and in fact a provision similar to section 3 of H.R. 2712 is contained in H.R. 2929. With this one amendment, the bill was favorably reported to the full Committee, as a single amendment in the nature of a substitute, by voice vote.

COMMITTEE VOTE

HR. 2712 was considered by the full Committee on July 26, 1989, and was ordered favorably reported, with an amendment in the nature of a substitute, by voice vote.

NEED FOR LEGISLATION

Following a decade of substantial domestic and foreign policy reform, the People's Republic of China (PRC) is in the midst of one of the most serious crises in the history of communist rule. In mid-April, 1989, a protest movement of unprecedented size and scope was launched by students, and joined by workers, journalists, and government and military personnel to demand greater democratization, more freedom, and the removal of key government officials who opposed these goals. This Democracy Movement lasted over a month and a half and led to an intense power struggle at the highest levels of the PRC's leadership.

By the second week of May, hundreds of thousands of protestors had brought Beijing and other major cities to a virtual standstill. Approximately 2,000 students initiated a hunger strike in Beijing's Tiananmen Square just prior to the start of Soviet Premier Mikhail Gorbachev's summit meeting with Chinese officials on May 15. The international press coverage, as well as subsequent difficulties in mobilizing a divided military, brought into question the power and credibility of China's old guard leadership. Yet the hardliners (led by Deng Xiaoping, Li Peng, and Yang Shangkun) were finally able to assert their control over moderates, led by Zhao Ziyang, who favored a more conciliatory approach to the demonstrations. In rapid succession, on May 19 and 20, Zhao reportedly "resigned" his position as Communist Party General Secretary and the government declared martial law in parts of Beijing. Uncertainty over China's internal power balance persisted, however, and it was not until armed military troops assaulted Beijing on June 3 and 4 that the Deng group clearly established its dominance. Estimated civilian casualties in the assault ranged as high as several thousand.

Since the government crackdown ended the Democracy Movement, Chinese leaders have utilized extremely harsh measures to quell dissent. At least 29 "counter-revolutionaries" have been executed (according to a July 17 New York Times article) and thousands have been detained or arrested. In testimony before the Subcommittee on July 20, 1989, Mr. Haiching Zhao, New England delegate to the National Coordination Committee on Chinese Student Affairs, spoke of the ongoing repression, particularly of students and scholars:

> * * * The tragedy of the arrests, kangaroo courts, ruthless punishment and executions continues unabated. Even more widespread persecution of intellectuals and students is proceeding ruthlessly but more quietly * * * Chinese college students are now required to undergo a "Love-the-PLA" (People's Liberation Army) brainwashing session, or face tough penalties. They are also forced to make confessions as to their activities around June 3–4 to the authorities. The terror tactics against press freedom also continue. Mr. Xiao Bin, the man who was arrested for being interviewed by ABC News, has just received a 10-year jail term for "spreading counter-revolutionary lies."

In the words of Purdue University student Gangliang Qiao, who testified before the Subcommittee on July 20, "The brutal repression of dissent with the barrel of a gun proves the urgency and necessity to protect Chinese students overseas." Indeed, students and scholars appear to be at the center of the Chinese government's targeted repression. Most Chinese students in the United States actively protested their government's actions, many even calling for its overthrow. The mere knowledge of a massacre which Chinese officials are trying to cover-up—let alone such overt anti-government behavior—could subject these individuals to substantial risk should they now be forced to return to their homeland.

Fear for the safety of Chinese students in this country is based on more than just hypothetical concerns—there is substantial evidence that the Chinese Government's efforts at intimidation have

reached the United States. Newspaper reports indicate that PRC officials have gathered documentary evidence against Chinese students conducting demonstrations in this country, presumably to be used upon their return to the PRC. Some student leaders in the United States have received threatening phone calls and have been visited by Chinese diplomatic officials, who have accused them of treason against the PRC.

Approximately 32,000 of the 40,000 Chinese students presently in the United States are here with a "J" visa status (according to INS estimates at the July 20, 1989, Subcommittee hearing). As defined in the Immigration and Nationality Act (INA), a person who enters with a J visa—known as an "Exchange Visitor"—must be

> * * * a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State.

The J status was originally created as a method to address the brain drain and was intended to be used by students who were funded significantly by their government. The J visa differs from the more standard "F" student visa in that it usually limits the adjustment or change of status options of its holders. Specifically, it prohibits the alien with a J visa from applying for a change of status "until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States."

The INA authorizes a waiver of the two-year foreign residency requirement in the following circumstances:

> (1) * * * upon the favorable recommendation of the Director (of the United States Information Agency), pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest * * *
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> (2) * * * upon the favorable recommendation of the Director, (the Attorney General may) waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

According to Professor Bill Ong Hing of Stanford Law School, in his testimony before the Subcommittee on July 20, 1989, "While a waiver is possible under the law, requirements are strict and therefore waivers are not generally issued."

On June 6, 1989, after consultation with the Secretary of State, the Attorney General directed the temporary delay of the enforced departure of PRC nationals who were present in the United States on that date. This Deferred Enforced Departure (DED) program resulted from the President's decision that Chinese in this country would not be deported against their will for the next twelve months. The Committee believes, however, that the Administration's program is inadequate in two key respects. First, it would require applicants to declare their unwillingness to return to the PRC, and, second, to relinquish permanently their current lawful status without the ability in the future to adjust that status. Because of these problems and because of the potential problems that could result for their families back in China, few Chinese nationals have taken advantage of this program.

ANAYLSIS OF LEGISLATION

Foreign students, depending on the circumstances under which they enter, may be classified as F, J, or M. An F student is defined as "a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States." Those nonimmigrants who enter for vocational training are considered M students, and must have entered the United States "solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than a language training program)."

Those who enter with J visas (i.e., exchange visitors) must be "a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State." 8 U.S.C. 1101(a)(15)(j). The J visa, established by the enactment of the Mutual Educational and Cultural Exchange Act of 1961, is unique for the following reasons: (1) educational institutions and organizations must be designated as an Exchange Visitor Sponsor by the United States Information Agency (USIA) before inviting participants to come as exchange visitors on the J-1 visa; and (2) it is the only nonimmigrant visa classification which subjects its visa holders, under certain conditions, to return to their home country for a period of two years. 8 U.S.C. 1182(e). The two-year residency requirement comes into play when government financing, either U.S. or foreign, is provided to the participant or when the foreign government lists the participant's field of expertise on its exchange visitor skills list. These lists indicate specialized knowledge or skills that are needed in the exchange visitor's home country.

H.R. 2712, as amended, waives the 2-year home country residency requirement for all nationals of the PRC who (1) were present in the United States on the date of the enactment of the bill; (2) were admitted to the United States as exchange visitors; and (3) would otherwise be subject to the 2-year home residency rule. This waiver is to be provided without regard to when an alien's authorized period of stay as an exchange visitor expired or will expire.

ADMINISTRATION POSITION

The Administration opposes the enactment of this legislation.

OVERSIGHT STATEMENT

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that it has exercised, and will continue to exercise, close oversight with regard to the administration of the Immigration and Nationality Act in general and nonimmigrant visa laws in particular.

Clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have an inflationary effect on prices and costs in the operations of the national economy.

ESTIMATE OF COST

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee concurs with the cost estimates set forth below by the Congressional Budget Office.

BUDGETARY INFORMATION

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority. Pursuant to Clause 2(l)(3)(C) of rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 26, 1989.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2712, the Emergency Chinese Adjustment of Status Facilitation Act of 1989, as ordered reported by the House Committee on the Judiciary, July 26, 1989.

Based on information provided by the Immigration and Naturalization Service, CBO estimates that enacting this bill would result in no significant cost to the federal government. This bill would

allow Chinese nationals currently studying in the United States to apply for immigrant visas without having to return to their native country for two years, as is normally required.

CBO estimates that this bill would not significantly affect the budget of any state or local government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 2712, as amended, do pass.

DISSENTING VIEWS OF HON. LAMAR SMITH

I urge my colleagues to vote against H.R. 2712, legislation that waives the two year residency requirement for all Chinese students holding J-1 visas. Although I agree that Chinese students and Chinese nationals should not now go back, this bill simply waives the two year foreign residency requirement without providing a statutory framework for their temporary stay in the United States.

The two year foreign resident requirement applies to all J-1 student visa holders and provides that foreign nationals, upon completion of their education, return to their country of origin. Education is a valuable resource to all countries. The two year foreign residency requirement protects foreign countries sending students to the United States, from the loss of their important human resources. Only under extreme hardship circumstances is this requirement waived.

The bill before us today waives the requirement for all Chinese students, not just those who are now eligible for this requirement. At this time we do not have enough information to know what will happen 7 or 8 years down the road, when some students might be required to fulfill their foreign residency requirement. At the very least this waiver should be limited to a time certain consistent with deferred deportation status.

The Department of State and the U.S.I.A. testified last week that this blanket waiver may create problems for future Chinese students seeking to come here and study. A different PRC regime may welcome back these students in future years, and, no doubt, their education is of tremendous value to their country. Therefore, such a blanket proposal jeopardizes our student visa program with China and perhaps our future relations with another Chinese regime.

It has been argued that Congress can always reverse its decision and change the blanket proposal once another regime comes to power in the PRC. However, as my colleagues know, reversing such a decision is much more difficult than making step-by-step decisions in granting extensions.

I am a cosponsor of another bill before us, H.R. 2929, introduced by Subcommittee Chairman Bruce Morrison, that I believe is a better solution. This bill establishes a statutory framework for protecting all Chinese nationals for 3 years with a possibility of extensions if conditions remain unsafe in China. Therefore, I oppose this blanket waiver proposal of student visas and instead urge my colleagues to support H.R. 2929.

LAMAR SMITH.

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